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ABSTRACT

This unit is one of a series that presents specific moments in history from which students focus on the meanings of landmark events. By studying a crucial turning-point in history, students become aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. By analyzing primary sources, students will learn how to analyze evidence, establish a valid interpretation, and construct a coherent narrative in which all the relevant factors play a part. This unit contains teacher background materials and lesson plans with student resources. It is applicable in U.S. History or American Government classes where students study political ideologies during the Revolutionary and early Federal periods. The unit presents five lessons on the Bill of Rights: (1) the Virginia and Pennsylvania Declarations of Rights; (2) the debate at the Constitutional Convention; (3) simulated ratification debate; (4) the House debate; and (5) culminating activity--cases involving the application of principles included in the Bill of Rights. The unit also includes an extension lesson that may be used to further explore the development of state declarations of rights. Objectives of the unit include: (1) understanding the evolution of the Bill of Rights; (2) clarifying ideological differences over the inclusion of a Bill of Rights in the federal Constitution; and (3) appraising the impact of a Bill of Rights on the development of American democracy. (DK)

ED 376 099

THE EVOLUTION OF THE BILL OF RIGHTS

A UNIT OF STUDY FOR GRADES 8 - 12

By David Vigilante
Teacher Associate, NCHS

U.S. DEPARTMENT OF EDUCATION
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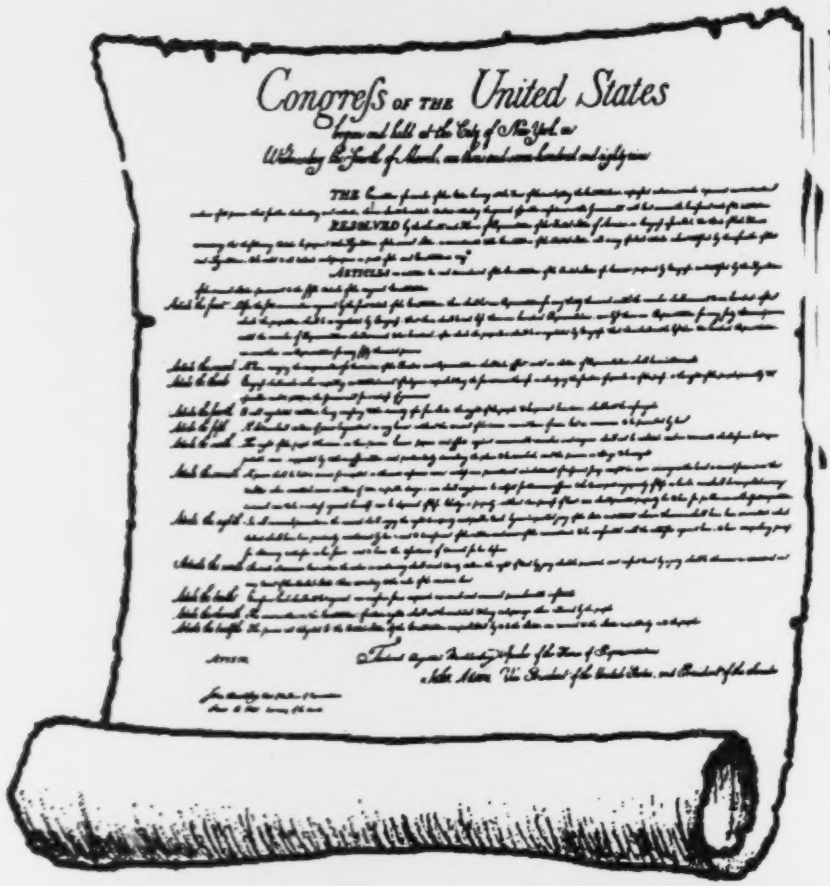

NATIONAL CENTER FOR HISTORY IN THE SCHOOLS
A Cooperative Research Program of the
University of California, Los Angeles
and the National Endowment for the Humanities

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SO 024 468

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On the cover: Facsimile of the Bill of Rights Draft.

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We also acknowledge the continuing contributions of the National Endowment for the Humanities which established the National Center for History in the Schools in March 1988 and has generously supported this activity.

For information on additional teaching units and other resources from the Center, please write:

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APPROACH AND RATIONALE

By Linda Symcox

The National Center for History in the Schools has developed the following collection of lessons for teaching **The Evolution of the Bill of Rights**. Our units are the fruit of a year-long collaboration between history professors and experienced teachers of both United States and World History. They represent specific "**dramatic moments**" in history from which you and your students can pause to delve into the deeper meanings of selected landmark events and explore their wider context in the great historical narrative.

In our approach, the continuing narrative provides the context in which the dramatic moment is situated. By studying a crucial turning-point in history, the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected dramatic moments that best bring alive that decision-making process. We hope that through this approach, your students will realize that history is an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow's history.

Our dramatic moments are based on **primary sources**, taken from documents, artifacts, journals, diaries, newspapers and literature from the period under study. As you know, a primary source is a **first-hand** account of any event in history. For example, the telecast or the script of a speech would be a primary source. A secondary source is a **second-hand** account of an event. This would be, for example, the newspaper account of the speech the next day or a newscaster's report about the speech. All historical accounts, such as textbooks, are by their very

nature secondary sources. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to re-create for your students a sense of "being there," a sense of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian's craft, discovering for themselves how to analyze evidence, establish a valid interpretation and construct a coherent narrative in which all the relevant factors play a part.

CONTENT AND ORGANIZATION

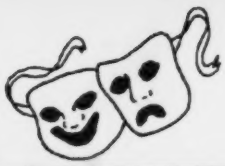
Within this unit, you will find: 1) **Teacher Background Materials** and 2) **Lesson Plans** with **Student Resources**. This unit, as we have said above, focuses on certain key moments in time and should be used as a supplement to your customary course materials. We have chosen to pitch the various lessons on different grade levels and they can usually be adapted to a slightly higher or lower level.

The **Teacher Background** section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the specific **Dramatic Moment** to the larger historical narrative. You may consult it for your own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.

The **Lesson Plans** include a variety of ideas and approaches for the teacher which can be elaborated upon or

cut as you see the need. These lesson plans contain student resources which accompany each lesson. These resources consist of primary source documents, any handouts or student background materials, and in many cases, a bibliography for the unit.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of inevitable facts and meaningless dates but rather as an endless treasure of real-life stories, and an exercise in analysis and reconstruction, rather than rote memorization.



DO WE NEED A BILL OF RIGHTS?

"There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declarations of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law."

George Mason, Objections
to the Constitution,
September 16, 1787

Reprinted as published in *The Papers of George Mason, 1725-1792, Volume III*. Chapel Hill: University of North Carolina Press, 1970. p 991.

"I...affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous."

Alexander Hamilton,
Federalist 84

Reprinted as published in *The Federalist Papers*, edited by Clinton Rossiter. Mentor, 1961. p.513.

"What I disapproved from the first moment...was the want of a bill of rights to guard liberty against the legislative as well as executive branches of the government, that is to say to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land...."

Thomas Jefferson

Reprinted as published in *American Issues Forum, Volume One*, by Daniel Aaron. Regents of the University of California, 1975. p.222.

I. UNIT OVERVIEW AND RATIONALE

The Bill of Rights is often enshrined as a sacred document which guarantees our basic human and civil rights. Survey texts discuss the clash of ideals at the Constitutional Convention but seldom refer to conflicts over the incorporation of a Bill of Rights outside the context of the state ratification debates. The stormy history of the Bill of Rights should be included in the study of United States history and American Government. Its evolution from state declarations to final incorporation as the first ten amendments to the Constitution illustrates the clash of political ideology in a turbulent era of history.

Although today we regard the Bill of Rights with reverence, adoption was a long and arduous process which began with Virginia's Declaration of Rights in 1776 and culminated with the states' ratification of the Bill of Rights on December 15, 1791. A study of the process helps students understand the importance of vigilance in maintaining individual rights, lending credence to the Federalist arguments that "parchment barriers" in themselves are worthless.

II. UNIT CONTEXT

This unit is applicable in United States history or American Government classes where students study political ideologies during the Revolutionary and early Federal periods. The unit presents five lessons on the Bill of Rights: the Virginia and Pennsylvania Declarations of Rights; discussion regarding incorporation at the Constitutional Convention; Federalist and Antifederalist debates over ratification of the Constitution; House debates regarding inclusion of a bill of rights; and cases involving the application of principles included in the Bill of Rights. The unit also includes an extension lesson which may be

used to further explore the development of state declarations of rights. The unit should be used to supplement the study of the Constitution in United States history. In American Government classes lessons are appropriate in the study of political philosophy and as an introduction to a study of contemporary issues related to the Bill of Rights.

III. UNIT OBJECTIVES

1. To understand the evolution of the Bill of Rights.

2. To clarify ideological differences over the inclusion of a Bill of Rights in the federal Constitution.

3. To appraise the impact of a Bill of Rights on the development of American democracy.

IV. INTRODUCTION TO THE EVOLUTION OF THE BILL OF RIGHTS

By the spring of 1776 reconciliation with Britain appeared to be impossible, and on May 10 the Continental Congress called on each colony to assume sovereignty. By May 15, the Virginia Convention passed a resolution to sever all ties with the mother country and called on the Continental Congress to declare complete independence. At the same time the Virginia Convention authorized a committee to draft a Declaration of Rights and a plan of government for the colony.

George Mason was appointed as one of the twenty-seven members of the drafting committee. Mason had a reputation as a patriot and had the admiration and respect of colleagues including his Fairfax County neighbor, George Washington. Mason quickly grew impatient with parliamentary maneuvering and wrote to Richard Henry Lee that nothing would come from a committee "overcharged with useless members." Mason, determined to meet the Convention's charge, took it upon himself to draft a Declaration of Rights. The declaration began:

> ***...All Men are born equally free and independant [sic], and have certain inherent natural Rights, of which they cannot by any Compact, deprive or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursueing [sic] and obtaining Happiness and Safety.***

Rutland, *The Papers of George Mason*, Vol. 1, pp. 276-277.

This language posed problems in a state with some 200,000 slaves. Robert Carter Nicholas led the opposition, attacking the phrase "born free and equal." He argued that adopting this language would lead to "civil

convulsion" because the ideas expressed in this statement were dangerous to a slave-holding society. Thomas Ludwell Lee complained that opponents to Mason's proposal were obstructionists, remarking:

> ***...we find such difficulty in laying the foundation stone, that I very much fear for the Temple of Liberty which was proposed to be erected. ...A certain set of aristocrats, —for we have such monsters here,— finding that their execrable system cannot be reared on such foundations have to this time kept us at Bay on the first line, which declares all men to be born equally free and independent....***

Rutland, *The Birth of The Bill of Rights*, 1776-1791, p.37.

Mason was appalled by the debate and to avoid further haggling agreed to substitute the words "by nature" for "born" and the word "inherent" was dropped in the first sentence. Another compromise added the phrase "when they enter into a state of society." The opening statement of the Declaration of Rights now read:

> ***That all men are by nature equally free and independent, and have inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.***

The addition of the phrase "when they enter into a state of society" was implicitly understood to remove any pretension that slaves shared in the natural rights guaranteed by this first article of the Declaration of Rights. Slaves held no property and were not considered "constituent members" of Virginia society. Other less substantive changes were approved and in June 1776, Vir-

ginia adopted the Declaration. George Mason, seldom boastful of his role in writing the Declaration, acknowledged his authorship in a letter to a friend dated October 2, 1778:

...I inclose you a Copy of the first Draught of the Declaration of Rights, just as it was drawn by me, & presented to the Virginia Convention, where it received few Alterations; some of them I think not for the better; this was the first thing of the kind upon the Continent, and has been closely imitated by the other States.

Robert A. Rutland (editor). *The Papers of George Mason*, Volume I 1749-1778. Chapel Hill: University of North Carolina Press, 1970. page 434.

The Virginia declaration provided a model for other states. Pennsylvania likewise adopted a Declaration of Rights on September 28, 1776, which prefaced the new state Constitution. Employing much of the language of the Virginia document, the Pennsylvania Declaration also reflected a marked Quaker influence. It expressly guaranteed liberty of conscience and prohibited coercion to bear arms against one's religious beliefs. Although slavery existed in both states in 1776, Pennsylvania's first article was not amended so as to reconcile it with the Virginia slave holders' objections. It read:

...all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Of the thirteen original states, eight adopted separate declarations of rights; the remaining five incorporated some of the guarantees of the Virginia and Pennsylvania declarations into the body of their constitutions.

In 1787, delegates meeting in Philadelphia drafted a Constitution after bitter debate on a variety of issues. The discussion of a bill of rights was addressed on several occasions, but when George Mason called for a vote to have a committee draft a declaration of rights, it failed to carry a single state. This failure to include a bill of rights almost proved fatal during the ratification debates. Opponents of the Constitution used the omission of a guarantee of basic rights as proof of a conspiracy to subvert the principles on which the nation was founded.

Antifederalists objected to many specific features of the new political system but best articulated their objections regarding the failure of the Constitution to incorporate a bill of rights. Federalists, however, had won an important battle at the Philadelphia Convention in requiring that the Constitution be submitted to state conventions in its entirety and that ratification could not be placed on conditions or amendments.

Federalists justified the absence of a declaration of rights by arguing that the Constitution established a federal system with specific powers delegated to the national government and other powers reserved to the states. The powers held by the central government could not limit or threaten liberty. Federalists furthermore asserted that in the English tradition, bills of rights were necessary in order to limit royal prerogatives and the usurpation of power. They added that "parchment barriers" would provide no protection; only an ever-vigilant populace could safeguard basic rights. In addition, a grave risk existed in enumerating rights—those which may not be stated would be assumed denied.

The Antifederalists, on the other hand, argued that power corrupts, thus compelling written protections of basic rights which would set governmental bounds. They

feared that the general welfare and the necessary and proper clauses of Article I, Section 8 along with the supremacy clause in Article VI created a powerful central government with dangerous powers. The Antifederalists believed that the Constitution placed in jeopardy guarantees which had been incorporated in state declarations of rights by giving the national government vague and unlimited powers and creating a federal judiciary to serve as a final arbiter in disputes. They countered the Federalist argument regarding specific enumeration of powers by citing prohibitions of powers in Article I, Section 9 and inquired why these and no other rights were protected in the Constitution.

Massachusetts approved the Constitution in February, 1788, with a call for "certain amendments and alterations" to lessen "the fears and quiet the apprehension of many of the good people of the commonwealth." Ratification debates in New York and Virginia showed the degree of opposition and ultimately lead to a promise of the inclusion of a Bill of Rights.

James Madison introduced a series of amendments to the Constitution in the House of Representatives on June 8, 1789. Federalists opposed on the same grounds as they argued in the ratification debates and further argued that it was inappropriate to amend the Constitution at this time. Antifederalists likewise opposed Madison's proposals claiming that they were "milk and water propositions." Despite haggling, mostly over form, amendments were approved and sent to the Senate. After some alterations, the Bill of Rights was finally submitted to the states for ratification.

V. LESSON PLANS

1. The Virginia and Pennsylvania Declarations of Rights (an extension lesson focuses on other state declarations)

2. The Debate at the Constitutional Convention

3. Federalist and Antifederalist perspectives on inclusion of a Bill of Rights

4. The House Debate

5. Voices from the Past—Testing the Bill of Rights

LESSON ONE

THE VIRGINIA AND PENNSYLVANIA DECLARATIONS OF RIGHTS

A. Objectives (One Day)

1. To analyze the impact of British colonial policy on the incorporation of declarations of rights.

2. To compare and contrast the similarities and differences in the Virginia and Pennsylvania Bills of Rights.

3. To appraise social and religious factors which influenced aspects of the Virginia and Pennsylvania Declarations of Rights.

B. Lesson Activities

1. Open the lesson by using the "**DRAMATIC MOMENT.**" Make a transparency of the three quotations and project for students to read. Ask students to react to the three different quotations. What do these short quotes illustrate regarding eighteenth-century attitudes towards the idea of a bill of rights?

2. Distribute **DOCUMENTS A** and **B**

   a. Divide the class into two groups. Inform students that they will be given a bill of rights which was written as a part of a state constitution in 1776. Give half the class **DOCUMENT A**, The Virginia Declaration of Rights, and the remainder of the class **DOCUMENT B**, A Declaration of the Rights of the Inhabitants of the State of Pennsylvania. Sub-divide each group into smaller working groups and have each group read and discuss the document.

b. Have students report on the sixteen articles of each state Bill of Rights. Discuss the similarities and differences in the two state declarations. If necessary, distribute **DOCUMENT C** to further assist students in comparing and contrasting the two documents.

c. How do these two state declarations relate to British colonial rule? To what degree were these documents a response to the particular historical experiences of Virginia and Pennsylvania in the pre- revolutionary era?

3. Have students respond to the following question as a written homework assignment: What factors contribute to the distinct differences in the two state declarations of rights? Encourage students to review the social and religious composition of the two states.

C. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

emoluments	remonstrance
vicinage	weal

D. Evaluating the Lesson

Class discussion provides an opportunity to check for understanding. The written homework assignment is an assessment of the ability of students to apply their knowledge of social factors within each state that are reflected in the respective state declarations of rights.

STUDENT RESOURCE: DOCUMENT A

VIRGINIA DECLARATION OF RIGHTS
(Primary Source)

The Virginia House of Burgesses order the framing of a Declaration of Rights on May 6, 1776. The document was to be drafted by a special committee. George Mason of Fairfax County took the lead in drafting the document. The declaration, adopted on June 12, 1776, was not submitted to the people for ratification.

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

Sec. 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing the obtaining of happiness and safety.

Sec. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

Sec. 3. That government is, or ought to be instituted for the common benefits, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Sec. 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Sec. 5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating in the burdens, they should, at fixed periods be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

Sec. 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right to suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

Sec. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Sec. 8. That in all capital or criminal prosecutions a man hath a right to demand the causes and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

Sec. 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Sec. 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

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Sec. 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

Sec. 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

Sec. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Sec. 14. That the people have the right to uniform government; and, therefore, that no government separated from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

Sec. 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

Sec. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

Source for Virginia Declaration of Rights: compiled under an order of the United States Senate by Benjamin Perley Poore, The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States, Part II., Second Edition, New York: Burt Franklin, 1972 (First published in 1878 and reprinted in 1972), pages 1908-1909.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF PENNSYLVANIA

(Primary Source)

The Pennsylvania Declaration of Rights and Constitution was framed by a convention which assembled in Philadelphia on July 15, 1776. The document, completed on September 28, 1776, was not submitted to the people for ratification.

I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending of life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understandings: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil rights as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul [sic], the right of conscience in the free exercise of religious worship.

III. The people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. The government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or sett [sic] of men, who are a part only of that community; And that the community

hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VII. That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or be elected into office.

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence [sic] of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the causes and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers, and possessions free from search or seizure, and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought

not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred.

XII. That the people have a right to freedom of speech, and or writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

XIV. That a frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality are absolutely necessary to preserve the blessings of liberty, and keep a government free: The people ought therefore to pay particular attention to these points in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance.

Source for Pennsylvania Declaration of Rights: Compiled under an order of the United States Senate by Benjamin Perley Poore, The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States, Part II., Second Edition, New York: Burt Franklin, 1972 (First published in 1878 and reprinted in 1972), pages 1541-1542.

STUDENT RESOURCE: DOCUMENT C

DECLARATION OF RIGHTS

The numbers below refer to the articles as listed in the *Virginia* or *Pennsylvania Declaration of Rights* and they will not always line up.

Virginia (29 June 1776)		**Pennsylvania** (28 September 1776)	
Article		**Article**	
1.	All men by nature are equally free and independent when they enter into a state of society	1.	All men are born equally free and independent
2.	All power vested and derived from the people; magistrates are their trustees and servants, and at all times amenable to them	2-4.	People have sole exclusive and inherent rights of governing—officers of government are accountable to them
3.	Right of the people to reform, alter or abolish "inadequate" or "contrary" government	3.	Right to "alter or abolish" nonresponsive government
4.	No hereditary offices	4.	All officers to be elected
5.	Separation of powers		No reference
6.	Suffrage—all men "having sufficient evidence [property] of permanent common interest in the community"	6.	Suffrage—"all free men having a sufficient evidence of common interest with an attachment to the community"
7.	No suspension of laws without legislative consent		No reference
8.	Trial by jury; cannot be required to testify against oneself; speedy trial, etc.	9.	Same

9. No excessive bail; no cruel and unusual punishment	Absent from the Declaration of Rights; Article 29 of the Constitution of 1776 specifies no excessive bail
10. No general search warrants	10. Same
11. Jury trial in civil suits	11. Same
12. Freedom of the press	12. Freedom of speech and press
13. Standing army to be avoided in peacetime; military under strict subordination to civil power	13. Same
14. No government, separate from or independent of Virginia to be established within the state	15. All men have the right to emigrate from one state to another; or to form a new state in vacant countries whenever they think it will promote their own happiness
15. No free government can exist without popular adherence to justice, moderation, temperance, frugality, and virtue	14. Popular adherence to justice, moderation, temperance, industry and frugality
16. Free exercise of religion	2. Liberty of conscience; no established church supported by taxpayers; no person may be denied civil rights as a citizen who acknowledges the "being of God"
	8. No coercion to bear arms against one's religious beliefs
	16. People have the right to assemble; to instruct their representatives; and to apply to the legislature for redress of grievances, by address, petition, or remonstrance

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DECLARATION OF RIGHTS IN THE THIRTEEN ORIGINAL STATES

This optional lesson may be used to develop further the study of state declarations of rights and to review constitutional recognition of inalienable or natural rights in the thirteen original states and Vermont.

A. Objectives

Students will be able to:

1. Compare and contrast the similarities and differences in state bills of rights.

2. Analyze the guarantees of natural or inalienable rights incorporated in state bills of rights

B. Lesson Activities (One Day)

Note to the Teacher

Use **DOCUMENTS D** and **E** as an alternative lesson. **DOCUMENT F** may be used as an independent lesson or in conjunction with the other two documents.

1. Distribute **DOCUMENT D**—"States Without Separate Bills of Rights;" **DOCUMENT E**—"States With Separate Bills of Rights." Use **DOCUMENTS D** and **E** in this lesson to supplement the study of the Virginia and Pennsylvania Declaration of Rights.

2. Have students use the information in **DOCUMENTS D** and **E** to write an essay comparing the guarantees of the bills of rights in each of the states.

3. Use **DOCUMENT F** to illustrate that most states

recognized in the first article of their Declaration of Rights or Constitution the belief in the equality of men under the law.

4. Have students analyze the wording of inalienable rights in state constitutions. What conclusions may be drawn from the placement and wording of these references to natural rights in state documents? To what degree are the same rights referenced in the federal Bill of Rights?

C. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

exigencies	constituents
bill of attainder	ex post facto
sovereign	

D. Evaluation

Use written assignments and student journals as a means of assessment. Have students who used this extension lesson organize a panel discussion or seminar in which they present their conclusions to the class at large. Evaluate their oral presentation as part of assessment.

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STUDENT RESOURCE: DOCUMENT D

STATES WITHOUT SEPARATE BILLS OF RIGHTS
(Secondary Source)

The Second Continental Congress passed the following resolution on May 10, 1776:

> *Resolved*, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and American in general....

Georgia (1777)

Although Georgia did not preface its Constitution of 1777 with a Bill of Rights, it incorporated guarantees of free exercise of religion; habeas corpus; freedom of the press; trial by jury; and prohibited excessive bail.

New Jersey (1776)

New Jersey established its Constitution in 1776 a few days after Virginia's convention adjourned. Although New Jersey did not follow Virginia's lead in establishing a separate Declaration of Rights, its Constitution did guarantee in the body of the document trial by jury; religious freedom; and rights of criminal defendants to have the "same privileges of witnesses and counsel as their prosecutors."

New York (1777)

New York established its Constitution in 1777 without a separate Declaration of Rights. The New York Constitution guaranteed against the deprivation of rights without due process of law; trial by jury; right to counsel; free exercise of religion; and a prohibition of bills of attainder. The New York Constitution specifically declares that it is the duty of "every man who enjoys the protection of society" to be prepared to defend the state; however, it excuses Quakers provided they pay "such sums of money, in lieu of their personal service."

Rhode Island (1842)

The State of Rhode Island did not revise its colonial charter in 1776. The Charter of 1663 remained in effect until suspended by the Constitution of 1842. Article I of the Constitution of 1842 contains 23 sections which form the state's Declaration of Rights. Rights guaranteed by this Constitution are similar to those of the United States Bill of Rights except for the following:

Section 4	prohibits slavery;
Section 11	prohibits confinement of debtors without a strong presumption of fraud after their property has been forfeited to their creditors;
Section 12	prohibits ex post facto laws and laws impairing the obligations of contracts;
Section 17	people guaranteed free exercise of all rights to fish previously granted by the state; and
Section 18	strict civilian authority over the military.

South Carolina (1778)

South Carolina framed a temporary Constitution in March 1776, nearly two months before the call from the Continental Congress to establish new government charters. The state Constitution enacted in 1778 provided for an established church but contained provisions guaranteeing freedom of conscience. The Constitution also declared that punishments be "proportionate to the crime;" general due process of law in criminal matters; the military be "subordinate to the civil power of the State;" and freedom of the press.

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STATES WITH SEPARATE BILLS OF RIGHTS
(Primary Source Excerpts)

Connecticut (1776)

Although Connecticut did not frame a Constitution in 1776 the state did incorporate a Declaration of Rights in its governing charter. The Declaration stated "...That no Man's Life shall be taken away: No Man's Honor or good Name shall be stained: No Man's Person shall be arrested, restrained, banished, dismembered, nor in any Ways punished: No Man shall be deprived of his Wife or Children: No Man's Goods or Estate shall be taken away from him, nor any Ways indamaged [sic] under the Colour [sic] of Law, or Countenance of Authority: unless clearly warranted by the Laws of this State...." The Declaration further insures basic rights of the accused.[1]

[1] Bernard Schwartz, *The Bill of Rights: A Documentary History, Volume I*. New York: Chelsea House, 1971. Page 290.

Delaware (1776)

Delaware's Declaration of Rights was influenced by the Virginia and Pennsylvania Declarations. The Delaware Declaration contained similar guarantees, however it prohibited an ex post facto power (Section 11) and the quartering of troops (Section 21).

Maryland (1776)

The Maryland Declaration of Rights contained 42 articles, many were repetitions of those presented in the Virginia Declaration of Rights. Maryland, however, included a prohibition of ex post facto laws and bills of attainder. Article VIII of the Maryland Declaration provided for "freedom of speech and debates" but confined it only to the Legislature.

Massachusetts (1780)

The Massachusetts Legislature drew up a Constitution in 1778 but it was soundly rejected by the people because it did not contain a Bill of Rights. Different towns throughout the state developed Declarations which insured basic rights. The most famous of these was drawn up at Ipswich in Essex County, which became the focus for demands during the ratification debate that a Bill of Rights be

included in the Constitution as a prerequisite for state ratification. Although the Massachusetts Declaration is similar to those of other state bills of rights it specifically declares in Article IV that all powers not "expressly delegated to the United States of America" are held by the people of the Commonwealth of Massachusetts. Article IV predates the Tenth Amendment of the United States Bill of Rights.

North Carolina (1776)

North Carolina's Declaration of Rights was completed in December 1776 and contained the same basic guarantees as those of other states. Article VIII states "That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment." North Carolina was the first state to specify a right of indictment; a guarantee found in the Fifth Amendment of the United States Bill of Rights.

New Hampshire (1783)

New Hampshire, the first to establish its own independent system of self government, was the last state to adopt a state declaration of rights. The New Hampshire Bill of Rights is much the same as that of Massachusetts except that it does not specifically prohibit a bill of attainder. Article V of the New Hampshire Bill of Rights recognizes the "...natural and unalienable right to worship God according to the dictates of ...conscience, and reason...."

Article XVIII recognizes that penalties should be in proportion to the offense and states "...where the same undistinguishing severity is exerted against all offences; the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do those of the lightest dye...."[2]

[2] Bernard Schwartz, *The Bill of Rights: A Documentary History, Volume I*. New York: Chelsea House, 1971. Page 377.

Pennsylvania (1776)

Consult **DOCUMENT B** for the complete Declaration of the Rights of the Inhabitants of the State of Pennsylvania.

STUDENT RESOURCE: DOCUMENT E

Vermont (1777)

During the Revolution Vermont sought independence from Britain and the states of Massachusetts, New Hampshire, and New York which had laid claim to the territory. Massachusetts in 1781 and New Hampshire the following year agreed to the independence of Vermont. It was not, however, until 1790 that New York consented to the admission of Vermont as a state in the Union. Despite the failure of other states to recognize her independence, Vermont assembled a convention to frame its constitution and declaration of rights on July 2, 1777. Vermont's Declaration of Rights were completed in one week and are virtually a duplication of the Pennsylvania Declaration with one exception—Article I prohibits slavery.

Virginia (1776)

Consult **DOCUMENT A** for the complete Virginia Declaration of Rights.

RECOGNITION OF NATURAL RIGHTS

Connecticut

The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State...

Delaware

Article I. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

Georgia

Preamble: We, therefore, the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power declared to us, do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of this State:

Article I. The legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

Maryland

Article I. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

Massachusetts

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting

property; in fine, that of seeking and obtaining their safety and happiness.

New Hampshire

Article I. All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.

Article II. All men have certain natural, essential, and inherent rights; among which are—the enjoying and defending life and liberty—acquiring, possessing and protecting property—and in a word, of seeking and obtaining happiness.

New Jersey

Whereas all the constitutional authority ever possessed by the kings of Great Britain over these colonies, or their other dominions, was, by compact , derived from the people, and held of them, for the common interest of the whole society; allegiance and protection are, in the nature of things, reciprocal ties, each equally depending upon the other, and liable to be dissolved by the others being refused or withdrawn....

We, the representatives of the colony of New Jersey, having been elected by all the counties, in the freest manner, and in congress assembled, have, after mature deliberations, agreed upon a set of charter rights and the form of a Constitution, in manner following, viz.

Article I. That the government of this Province shall be vested in a Governor, Legislative Council, and General Assembly.

New York

Article I. This convention...in the name and by the authority of the good people of this State, doth ordain, determine, and declare that no authority shall, on any pretence whatever, be exercised over the people or members of this State but such as shall be derived from and granted by them.

North Carolina

Article I. That all political power is vested in and derived from the people only.

Pennsylvania

Article I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Rhode Island

Rhode Island did not establish a Constitution or a Declaration of Rights in the Revolutionary era.

South Carolina

Preamble: That the following articles, agreed upon by the freemen of this State, now met in general assembly, be deemed and held the constitution and form of government of the said State, unless altered by the legislative authority thereof, which constitution or form of government shall immediately take place and be in force from the passing of this act, excepting such parts as are hereafter mentioned and specified.

Article I. That the style of this country be hereafter the State of South Carolina.

Vermont

Article I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any

person, as a servant, slave or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

Virginia

Article 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing the obtaining of happiness and safety.

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THE DEBATE AT THE CONSTITUTIONAL CONVENTION

A. Objectives

Students will be able to:

1. Summarize the arguments presented at the Constitutional Convention in favor of inclusion of a Bill of Rights.

2. Evaluate the effectiveness of the arguments presented for a Bill of Rights.

3. Form hypotheses on why the Convention rejected a Bill of Rights.

B. Lesson Activities

1. Provide students with a copy of **DOCUMENT G**, Discussions of a Bill of Rights at the Philadelphia Constitution. Have students read the three entries:

   a. Charles Pinkney's introduction of a "bill of rights" on August 20, 1787.

   b. Discussion on issues relating to a bill of rights and the vote of September 12.

   c. George Mason's objections publicized on September 15. The Convention adjourned on Monday, September 17 without seriously considering a Bill of Rights.

2. Working within small groups or as a general class discussion have students synthesize the arguments used in support of a bill of rights.

3. Assign **DOCUMENT H**, a secondary source which offers reasons why the Bill of Rights was not seriously considered at the Philadelphia Convention.

4. After reading **DOCUMENT H**, ask students to speculate as to why the Convention rejected a bill of rights and record their generalizations in their student journals. After completing Lesson Three have students re-evaluate these journal entries.

C. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

writ of habeas corpus
requisite
sovereign
tyrannical aristocracy
enumerated

D. Evaluating the Lesson

Assess student understanding through general class discussion and use student journals as a evaluation tool.

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DEBATE AT THE PHILADELPHIA CONVENTION
(Primary Source)

On Monday, August 20, 1787, Charles Pinkney of South Carolina introduced a "bill of rights" which was referred to a committee for discussion. On Wednesday, September 12, Hugh Williamson of North Carolina opened discussion on issues relating to a Bill of Rights; and on Saturday, September 15, George Mason wrote objections to the Constitution on the Committee of Style Report. The Philadelphia Convention spent little time discussing the incorporation of a separate declaration of rights.

Philadelphia, August 20, 1787

> ***Mr. Pinkney submitted to the House, in order to be referred to the Committee of detail, the following propositions—'Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same; or who, in the place were the Legislature may be sitting and during the time of its Session, shall threaten any of its members for any thing said or done in the House, or who shall assault any of them therefor [sic]—or who shall assault or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order.'***
>
> ***"Each branch of the Legislature, as well as the Supreme Executive shall have authority to require the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions."***
>
> ***"The privileges and benefit of the Writ of Habeas Corpus shall be enjoyed in this Government in the most expeditious and ample manner; and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding ___ months."***
>
> ***"The liberty of the Press shall be inviolably preserved"***
>
> ***"No troops shall be kept up in time of peace, but by consent of the Legislature"***

STUDENT RESOURCE: DOCUMENT G

"The military shall always be subordinate to the Civil power, and no grants of money shall be made by the Legislature for supporting military Land forces, for more than one year at a time"

"No soldier shall be quartered in any House in time of peace without consent of the owner."

"No person holding the office of President of the U.S., a Judge of their Supreme Court, Secretary for the Department of Foreign Affairs, of Finance, of Marine, of War, or of ___, shall be capable of holding at the same time any other office of Trust or Emolument under the U.S. or an individual State"

"No religious test or qualification shall ever be annexed to any oath of office under the authority of the U.S."

"The U.S. shall be for ever considered as one Body corporate and politic in law, and entitled to all the rights, privileges, and immunities, which to Bodies corporate do or ought to appertain"

"The Legislature of the U.S. shall have the power of making the Great Seal which shall be kept by the President of the U.S. or in his absence by the President of the Senate, to be used by them as the occasion may require.— It shall be called the Great Seal of the U.S. and shall be affixed to all laws."

"All Commissions and writs shall run in the name of the U.S."

"The Jurisdiction of the Supreme Court shall be extended to all controversies between the U.S. and an individual State, or the U.S. and the Citizens of an individual State"

These propositions were referred to the Committee of detail without debate or consideration of them, by the House.

Source: Max Farrand (ed.), The Records of the Federal Convention of 1787, Volume II. New Haven: Yale University Press, 1966. Pages 340-342. Also found in: Philip Kurland and Ralph Lerner (editors). The Founder's Constitution, Volume One Major Themes. Chicago: University of Chicago Press, 1987. Page 447.

STUDENT RESOURCE: DOCUMENT G

Philadelphia, September 12, 1787

Mr. Williamson, observed to the House that no provision yet made way for juries in Civil cases and suggested the necessity of it.

Mr. Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr. Gerry urged the necessity of Juries to guard agst. [sic] corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col. Mason perceived the difficulty mentioned by Mr. Gorham. The jury cases cannot be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, and would second a Motion if made for the purpose—It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr. Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col. Mason 2ded [sic] the motion.

Mr. Sherman was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient— There are many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col. Mason. The Laws of the U.S. are to be paramount to State Bills of Rights.

On the question for a Come [committee] to prepare a Bill of Rights
N.H. no Mass. abst. Ct no N—J— no Pa. no Del—no Md no.
Va. no N—C. no S—C—no Geo—no.
[Ayes—0; noes—10; absent—1.]

Source: Max Farrand (ed.), *The Records of the Federal Convention of 1787, Volume II.* New Haven: Yale University Press, 1966. Pages 587-588. Also found in: Philip Kurland and Ralph Lerner (editors). *The Founder's Constitution, Volume One Major Themes*. Chicago: University of Chicago Press, 1987. Page 447.

STUDENT RESOURCE: DOCUMENT G

GEORGE MASON'S NOTES

Philadelphia, September 16, 1787:

There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declarations of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law.

...Under their own construction of the general clause, at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their powers as far as they shall think proper; so that the State legislatures have no security for the powers now presumed to remain to them, or the people for their rights.

There is no declaration of any kind, for preserving the liberty of the press, or the trial by jury in civil causes; nor against the danger of standing armies in time of peace.

...This government will set out a moderate aristocracy: it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt, tyrannical aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other....

Text: Robert A. Rutland (ed.), *The Papers of George Mason, 1725-1792. Volume III, 1787-1792*. Chapel Hill: University of North Carolina Press, 1970. Source: pages 991-993. [Although Rutland indicates the above was written ca. September 16 (Sunday) it was most likely written on September 15 as indicated in Farrand's *Records of the Federal Convention, Volume II*.]

Photo: George Mason, Virginia (1725-1792). Reproduced as published in the Dictionary of American Portraits. Dover Publications, copyright 1967.

THE BILL OF RIGHTS...AN AFTERTHOUGHT
(Secondary Source)

The "Bill of Rights," comprised in the first ten amendments, is perhaps the best known, most cherished feature...of the Constitution. ...They most closely concern the individual person; they proclaim his dignity, his equality with all others in the society....

The question...arises, why was not this vital section embodied in the document as framed at Philadelphia and presented to the people for adoption? Why did these essentials have to be added after the Constitution went into effect? Why did wise and informed men, during the months of anxious discussion in constructing the fundamental law, fail to embrace provisions for which there was general popular demand immediately after the plan was unveiled? ...

Numerous answers became evident in the fierce debates in the state conventions and in the essays on the Constitution, pro and con, when it was submitted for approval. Men like Madison, Hamilton, Wilson, and Gouverneur Morris, confronted by objectors, explained that the omission of a bill of rights as such was not due to a blind spot in the majority at Philadelphia. First, the federal Constitution was one of stipulated powers, proceeding from the people in the states. The assumption was that authority not delegated was reserved. Consequently, if basic rights, not given to the central government, were to be defined, they should be looked for in the constitutions of the states. Here in fact, in all states except one, New Jersey, such solemn declarations existed, though not in all cases as a formal part of the constitution of government. Thus citizens had already protected their most precious freedoms of religion, speech, press, assemblage, proper trial on alleged offenses, immunity from cruel and unusual punishments, unwarranted searches and seizures, and the like....

Second, and nevertheless, the Constitution did contain, explicitly, appropriate ones of the protections contended for, including habeas corpus, trial by jury in criminal cases, strict definition of treason, prohibition of ex post facto laws and of titles of nobility. It would not have been fitting to forbid, in the federal instrument, other abuses, 'For why declare that things shall not be done which there is no power to do?...'

STUDENT RESOURCE: DOCUMENT H

These...were not afterthoughts, put forward as excuses for the Constitutional Convention. ...It must be remembered that ...[the framers] felt less obligation to incorporate civil liberties since the Articles of Confederation contained no such category of protections. Also, the framers recalled that the great English monuments in this department—Magna Carta, and the Bill of Rights accepted by William and Mary in 1689—limited the power of sovereigns, were extracted from monarchs. The men at Philadelphia were expressing the authority of the people themselves. Should these fear self-tyranny?

Source: Broadus Mitchell and Louise Pearson Mitchell. *A Biography of the Constitution of the United States: Its Origin, Formation, Adoption, Interpretation*. New York, Oxford University Press, 1975. Pages 193-195.

The Ninth PILLAR erected !
"The Ratification of the Conventions of nine States, shall be sufficient for the eſtabliſhment of this Conſtitution, between the States ſo ratifying the ſame." Art. VII.
INCIPIENT MAGNI PROCEDERE MENSES.
If it is not up it will rise.
The Attraction muſt be irreſiſtible
N. YORK

A cartoon published in 1788, which shows the nine states which first ratified the Constitution. These states are shown as pillars which support the arches of government. The pillars of Virginia and New York have not yet been erected, since these two states had not yet ratified. Courtesy of Bettmann Archives, New York, NY.

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SIMULATED RATIFICATION DEBATE

A. Objectives

Students will be able to:

1. Discern arguments during the ratification debates for or against the inclusion of a Bill of Rights from selected primary source documents.

2. Analyze and evaluate the arguments presented by both sides in the debate over ratification of the Constitution.

B. Lesson Activities

Hold a mock state ratifying convention in which the views of leading opponents and proponents of a bill of rights address the delegates.

Option 1:

1. Divide the class into two groups, Federalists and Antifederalists.

2. Distribute **DOCUMENTS I, J, K, L,** and **M** to the group designated as Federalists and **DOCUMENTS N, O, P, Q, R, S,** and **T** to the Antifederalists.

3. Have three students, depending on the size of the class, responsible for each document.

The Document Analysis Worksheet (**STUDENT WORKSHEET I**) may be used as a student guide in working with documents.

4. Have students read over the assignment and desig-

nate one to read or to present the information to the class in a dramatic speech.

5. You may have students further edit the documents or substitute vocabulary for a class presentation. If the paper is read, urge students to adhere as closely to the original words as possible. Students should be held responsible for taking notes on the presentations.

6. Following the presentations, have students debate the merits of incorporating a bill of rights in the Constitution.

Option 2: (This option will require an extra day.)

1. Use the jig-saw method; divide the class into two large groups, one Federalist, the other Anti-Federalist.

2. Subdivide each group into document-alike groups and have students read and discuss the documents in their respective groups.

3. Students in the larger Federalist group will then circulate as authorities on their respective documents to other Federalist groups. Students in the Anti-Federalist group will do likewise.

4. By the end of Day 1, students within the two large groups should have an understanding of all the documents pertaining to their point of view. On the following day have students debate the issue of the incorporation a bill of rights in the Constitution.

5. Conclude the lesson with one of the following assignments:

a. Students should place themselves in the persona of an individual living in the eighteenth century and write an editorial for either a Federalist or Anti-Federalist newspaper on the issue of incorporating a Bill of Rights into the Constitution.

b. Have students create a broadside including a descriptive passage as a means of persuading others to support their position on the issue of incorporation of a Bill of Rights into the Constitution.

C. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

posterity	perilous	aphorisms
malady	superfluous	criterion
tacit	divested	disingenuous
futility	dereliction	immaculate
efficacy	inefficacy	sophism
palladium	sublimate	metaphoric
paltry	evinced	impracticable
enumeration	indubitable	indefeasible
inalienable		

D. Evaluating the Lesson

Participation in the mock ratification debate and the written assignment provide an opportunity to check for understanding.

DOCUMENT ANALYSIS WORKSHEET

1. Type of Document: (Check one)

____ Newspaper	____ Map	____ Advertisement
____ Letter	____ Telegram	____ Congressional Record
____ Patent	____ Press Release	____ Census Report
____ Memorandum	____ Report	____ Speech
____ Other (specify type) _____		

2. Date(s) of document: _____

3. Author (or creator) of the document: _____

4. For what audience was the document written?: _____

5. Document information:

   A. List important pieces of information presented in the document.

   _____

   _____

   B. Why was the document written?

   _____

   _____

   C. What evidence in the document helped you to determine why it was written? (Quote from the document if appropriate.)

   _____

   _____

D. List two things the document tells us about the United States at the time it was written.

_____

_____

E. Write a question to the author which is left unanswered by the document.

_____

_____

This worksheet is an adaptation of one designed and developed by the staff of the Education Branch, Office of Public programs, National Archives, Washington, DC 20408.

ALEXANDER HAMILTON
(Primary Source)

Alexander Hamilton, writing to the people of New York state in support of the Constitution, argued in Federalist 84, dated May 27, 1788:

> ***"It has been several times truly remarked, that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. ...It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. 'WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.' Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government."***
>
> ***...Bills of rights...are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?...***

JAMES MADISON
(Primary Source)

Madison, in Federalist 38, writing under the pseudonym "Publius," is critical of those who object to the ratification of the Constitution. Madison uses the imagery of a patient who has consulted doctors regarding a serious illness. The doctors prescribe a remedy but persons began to advise the patient not to accept the physicians' advice.

> ***"...Such a patient and in such a situation is America at this moment. She has been sensible of her malady. She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is warned by others against following this advice under pain of the most fatal consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed or in the proper one to be substituted? Let them speak for themselves. This one tells us that the proposed Constitution ought to be rejected because it is not a confederation of the States, but a government over individuals. Another admits that it ought to be a government over individuals to a certain extent, but by no means to the extent proposed. A third does not object to the government over individuals, or to the extent proposed but to the want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved to the States in their political capacity. A fifth is of opinion that a bill or rights of any sort would be superfluous and misplaced and that the plan would be unexceptionable but for the fatal power of regulating the times and places of election....***
>
> ***"It is a matter both of wonder and regret that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect: it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it...."***

STUDENT RESOURCE: DOCUMENT J

James Madison (1751-1836). Fourth President of the United States. Engraving. Courtesy of Bettman Archives, NY.

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JAMES WILSON
(Primary Source)

James Wilson, a key figure at the Philadelphia convention, was a vigorous advocate for ratification of the Constitution and led a campaign for an immediate call for a state ratifying convention. In a speech on October 6, 1787 he spoke, in part, to the anti-federalist criticism of an absence of a bill of rights in the federal Constitution.

"...When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve....But in delegating federal powers, another criterion was necessarily introduced, and the congressional power is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence, it is evident, that in the former case everything which is not reserved is given; but in the latter the reverse of the proposition prevails, and everything which is not given is reserved.

"This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights a defect in the proposed constitution; for it would have been superfluous and absurd to have stipulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought the body into existence....

"[An]...objection which has been fabricated against the new constitution, is expressed in this disingenious [sic] form—'The trial by jury is abolished in civil cases.' I must be excused, my fellow citizens, if upon this point I take advantage of my professional experience to detect the futility of the assertion. Let it be remembered then, that the business of the Federal Convention was not local, but general...comprehending the views and establishments of thirteen independent sovereignties. When, therefore, this subject was in discussion...no precedent could be discovered to direct our course. The cases open to a trial by jury differed in the different States. It was therefore impracticable...to have made a reference to the practice of the States idle and useless; and it could not with any propriety be said that,

STUDENT RESOURCE: DOCUMENT K

'The trial by jury shall be as heretofore,' since there has never existed any federal system of jurisprudence, to which the declaration could relate...."

James Wilson (1742-1798). Lawyer, pamphleteer, jurist; signer of Declaration of Independence and Constitution; Associate Justice, U.S. Supreme Court. Reproduced as published in the Dictionary of American Portraits. Dover Publications, copyright 1967.

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ROGER SHERMAN
(Primary Source)

Roger Sherman of Connecticut wrote a series of five essays in support of the Constitution which appeared under the pseudonym "A Countryman."

"It is fortunate that you have been but little distressed with the torrent of impertinence and folly, with which the newspaper politicians have overwhelmed many parts of our country.

"It is enough that you should have heard, that one party has seriously urged, that we should adopt the new Constitution because it has been approved by Washington and Franklin: and the other, with all the solemnity of apostolic address to Men, Brethren, Fathers, Friends and Countrymen, have urged that we should reject, as dangerous, every clause thereof, because that Washington is more used to command as a soldier, than to reason as a politician—Franklin is old—others are young—and Wilson is haughty. You are too well informed to decide by the opinion of others, and too independent to need a caution against undue influence.

"Of a very different nature, tho' only one degree better than the other reasoning, is all that sublimity of nonsense and alarm, that has been thundered against it in every shape of metaphoric terror, on the subject of a bill of rights, the liberty of the press, rights of conscience, rights of taxation and election, trials in the vicinity, freedom of speech, trial by jury, and a standing army. These last are undoubtedly important points, much too important to depend on mere paper protection. For, guard such privileges by the strongest expressions, still if you leave the legislative and executive power in the hands of those who are or may be disposed to deprive you of them—you are but slaves. Make an absolute monarch—give him the supreme authority, and guard as much as you will by bills of right, your liberty of the press, and trial by jury;—he will find means either to take them from you, or to render them useless.

"The only real security that you can have for all your important rights must be in the nature of your government. If you suffer any man to govern you who is not strongly interested in supporting your privileges, you will

STUDENT RESOUCE: DOCUMENT L

certainly lose them. If you are about to trust your liberties to people whom it is necessary to bind by stipulation, that they shall not keep a standing army, your stipulation is not worth even the trouble of writing. No bill of rights ever yet bound the supreme power longer than the honeymoon of a new married couple, unless the rulers were interested in preserving the rights; and in that case they have always been ready enough to declare the rights, and to preserve them when they were declared....

"...On examining the new proposed constitution, there cannot be a question, but that there is authority enough lodged in the proposed federal Congress, if abused, to do the greatest injury. And it is perfectly idle to object to it, that there is no bill of rights, or to propose to add to it a provision that a trial by jury shall in no case be omitted, or to patch it up by adding a stipulation in favor of the press, or to guard it by removing the paltry objection to the right of Congress to regulate the time and manner of elections.

"If you cannot prove by the best of all evidence, viz. by the interest of the rulers, that this authority will not be abused, or at least that those who now have the same powers are not more likely to be abused by the Congress, than by those who now have the same powers, you must by no means adopt the constitution:—No, not with all the bills or rights and all the stipulations in favour [sic] of the people that can be made...."

Text: Excerpts from five essays by Roger Sherman written under the pseudonym *"A Countryman."*

Portrait: Roger Sherman (1721-1793). Connecticut legislator; only man to sign the Declaration of Independence, Articles of Association, Articles of Confederation, and the Constitution. Reproduced as published in the Dictionary of American Portraits. Dover Publications, copyright 1967.

CHARLES COTESWORTH PINCKNEY
(Primary Source)

Charles Cotesworth Pinckney was one of four delegates representing South Carolina at the Philadelphia Convention. Pinckney addressed the South Carolina House of Representatives on January 18, 1788 during the ratification debate.

> ***...With regard to the liberty of the press, the discussion of that matter was not forgotten by the members of the Convention. It was fully debated, and the impropriety of saying anything about it in the Constitution clearly evinced. The general government has no powers but what are expressly granted to it; it therefore has no power to take away the liberty of the press. That invaluable blessing...is secured by all our state constitutions; and to have mentioned it in our general Constitution would perhaps furnish an argument not expressly delegated to it. For the same reason, we had no bill of rights inserted in our Constitution; for, as we might perhaps have omitted the enumeration of some of our rights, it might hereafter be said we had delegated to the general government a power to take away such of our rights as we had not enumerated; but by delegating express powers, we certainly reserve to ourselves every power and right not mentioned in the Constitution. Another reason weighed particularly, with the members from this state, against the insertion of a bill of rights. Such bills generally begin with declaring that all men are by nature born free. Now, we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves....***

Source: Max Farrand (ed.), *The Records of the Federal Convention of 1787, Volume III.* New Haven: Yale University Press, 1966. Page 256.

THOMAS JEFFERSON
(Primary Source)

Thomas Jefferson was in France at the time of the Constitutional Convention and ratification debates. On December 20, 1787, he wrote a letter to James Madison in which he expressed general support for the Constitution but also indicated his concern over the omission of a bill of rights.

"...I will now tell you what I do not like. First, the omission of a bill of rights, providing clearly and without the aid of sophism for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land and not by the laws of nations. To say, as Mr. Wilson [James Wilson of Pennsylvania] does, that a bill of rights was not necessary because all is reserved in the case of the general government, which is not given, while in the particular ones, all is given which is not reserved, might do for the audience to which it was addressed, but it is surely a gratis dictum [a mere assertion], the reverse of which might just as well be said; and it is opposed by strong inferences from the body of the instrument as well as from the omission of the clause of our present Confederation, which had made the reservation in express terms.

"It was hard to conclude because there has been a want of uniformity among the states as to the cases triable by jury, because some have been so incautious as to dispense with this mode of trial in certain cases, therefore, the more prudent states shall be reduced to the same level

Thomas Jefferson (1743-1826). President of the United States, 1801-1809. Reproduced as published in the Dictionary of American Portraits. Dover Publications, copyright 1967.

of calamity. It would have been much more just and wise to have concluded the other way, that as most of the states had preserved with jealousy this sacred palladium of liberty, those who had wandered should be brought back to it; and to have established general right rather than general wrong. For I consider all the ill as established which may be established. I have a right to nothing which another has a right to take away; and Congress will have a right to take away trials by jury in all civil cases. Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse or rest on inference."

STUDENT RESOURCE: DOCUMENT O

JOHN SMILIE
(Primary Source)

John Smilie, speaking before the Pennsylvania ratifying convention on November 28, 1787, confronted James Wilson's argument regarding the necessity of a bill of rights.

> ***...The members of the federal convention were themselves convinced, in some degree, of the expediency and propriety of a bill of rights, for we find them expressly declaring that the writ of habeas corpus and the trial by jury in criminal cases shall not be suspended or infringed. How does this indeed agree with the maxim that whatever is not given is reserved? Does it not rather appear from the reservation of these two articles that everything else, which is not specified, is included in the powers delegated to the government? This, sir, must prove the necessity of a full and explicit declaration of rights; and when we further consider the extensive, the undefined powers vested in the administrators of this system, when we consider the system itself as a great political compact between the governors and the governed, a plain, strong, and accurate criterion by which the people might at once determine when, and in what instance, their rights were violated, is a preliminary, without which this plan ought not to be adopted....***
>
> ***It is said...that the difficulty of framing a bill of rights was insurmountable: but, Mr. President, I cannot agree in this opinion. Our experience, and the numerous precedents before us, would have furnished a very sufficient guide. At present there is no security, even for the rights of conscience, and under the sweeping force of the sixth article every principle of a bill of rights, every stipulation for the most sacred and invaluable privileges of man, are left at the mercy of government.***

Source: John P. Kaminski and Richard Leffler (editors), *Federalists and Antifederalists: The Debate Over the Ratification of the Constitution*. Madison: Madison House, 1989. Page 165.

MELANCTON SMITH
LETTERS FROM THE FEDERAL FARMER
(Primary Source)

"Letters from the Federal Farmer" were written during the New York debate over ratification of the Constitution. The author is believed to be the New York anti-federalist Melancton Smith although some have attributed the letters to the Virginian Richard Henry Lee who was in New York during the ratification debate.

"...There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern; and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm—These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only.—I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British system; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

"But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I will believe a complete federal bill of rights to be very practicable...."

BRUTUS
(Primary Source)

A series of essays penned under the pseudonym "Brutus" were published in The New York Journal over a six month period beginning in October, 1787. Anti-federalist Robert Yates, a New York delegate to the Constitutional Convention, is believed to be Brutus. The following is taken from an essay printed on November 1, 1787.

"...When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

"If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over another, but in the united consent of those who associate. ...The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved....It is not necessary...that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good....It is...proper that bounds should be set.

"...Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers

against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their Magna Charta and bill of rights have long been a boast, as well as the security, of that nation. ...I presume, to an American, then, that this principle is a fundamental one, in all the constitutions of our states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservations of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security to the rights of the people is not to be found in this constitution.

"...So clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, are wilfully [sic] endeavouring [sic] to deceive, and to lead you into an absolute state of vassalage."

MERCY OTIS WARREN
(Primary Source)

Mercy Otis Warren, an anti-federalist, wrote of objections to the ratification of the Constitution in her History of the Rise, Progress and Termination of the American Revolution, Volume II, which was first published in 1805.

"...Many of the intelligent yeomanry and of the great bulk of independent landholders, who had tasted the sweets of mediocrity [everyone living at approximately the same level], equality and liberty, read every unconditional ratification of the new system in silent anguish, folded the solemn page with a sigh, and wept over the names of the native sons of America, who had sold their lives to leave the legacy of freedom to their children. On this appearance of a consolidated government, which they thought required such important amendments, they feared that a dereliction of some of their choicest privileges might be sealed, without duly considering the fatal consequences of too much precipitation [haste]. 'The right of taxation, and the command of the military,' says an ingenious writer, 'is the completion of despotism.' The last of these was consigned to the hands of the president, and the first they feared would be too much under his influence. The observers of human

Mrs. James Warren (Mercy Otis), about 1763. John Singleton Copley American, 1738-1815. Oil on canvas. Bequest of Winslow Warren. Courtesy, Museum of Fine Arts, Boston.

conduct were not insensible, that too much power vested in the hands of any individual, was liable to abuses, either from his own passions, or the suggestions of others, of less upright and immaculate intentions than himself.

"Of thirteen state conventions, to which the constitution was submitted, those of Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, and Georgia, ratified it unconditionally, and those of New Hampshire, Massachusetts, New York, Virginia, and South Carolina, in full confidence of amendments, which they thought necessary, and proposed to the first congress; the other two, of Rhode Island and North Carolina, rejected it. Thus, it is evident that a majority of the states were convinced that the constitution, as at first proposed, endangered their liberties...

Mercy Otis Warren, *History of the Rise, Progress and Termination of the American Revolution, Volume II.* Originally published in Boston, 1806.

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PATRICK HENRY
(Primary Source)

Patrick Henry, speaking on June 5, 1788, during the Virginia ratification debate.

...What, Sir, is the genius of democracy? Let me read that clause of the Bill of Rights of Virginia, which relates to this: 3d cl. 'That government is, or ought to be instituted for the common benefits, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.' This, Sir, is the language of democracy; that a majority of the community have a right to alter their Government when found to be oppressive: But how different is the genius of your new Constitution from this? How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority? If these Gentlemen standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion of the majority, I must submit; but to me, Sir, it appears perilous and destructive: I cannot help thinking so: Perhaps it may be the result of my age: these may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, Sir, amendments are left to the twentieth or the tenth part of the people of America, your liberty is gone forever...."

LUTHER MARTIN
(Primary Source)

Oliver Ellsworth, writing under the pseudonym "The Landowner" accused Luther Martin of Maryland of not accurately representing his position regarding a bill of rights in debates at the Philadelphia Convention. Martin replied to" The Landowner's" charges on March 19, 1788.

...With respect to a bill of rights, had the government been formed upon principles truly federal...there would have been no need of a bill of rights, as far as related to the rights of individuals, but only as to the rights of states. But the proposed constitution being intended and empowered to act not only on states, but also immediately on individuals, it renders a recognition and a stipulation in favour [sic] of the rights both of states and of men, not only proper, but in my opinion absolutely necessary. ...The more the system advanced the more was I impressed with the necessity of not merely attempting to secure a few rights, but of digesting and forming a complete bill of rights ...prefixed to the Constitution, to serve as a barrier between the general government and the respective states and their citizens; because the more the system advanced the more clearly it appeared to me that the framers of it did not consider that either states or men had any rights at all ...accordingly, I devoted a part of my time to actual preparing and draughting such a bill of rights, and had it in readiness before I left the Convention, to have laid it before a committee. I conversed with several members on the subject; they agreed with me on the propriety of the measure, but at the same time expressed their sentiments that it would be impossible to procure its adoption if attempted. A very few days before I left the Convention, I shewed to an honorable member...a proposition...couched in the following words; 'Resolved that a committee be appointed to prepare and report a bill of rights, to be prefixed to the proposed Constitution,' and I then would instantly have moved for the appointment of a committee for that purpose, if he would have agreed to second the motion, to do which he hesitated, not as I understand from any objections to the measure, but from a conviction in his own mind that the motion would be in vain.

Thus my fellow citizens, you see that so far from having no objections to

the system on this account, while I was at Convention, I not only then thought a bill of rights necessary, but I took some pains to have the subject brought forward, which would have been done, had it not been for the difficulties I have stated....

Luther Martin (c. 1748-1826). Lawyer, jurist, member of Continental Congress, delegate to Constitutional Convention; proposed supremacy clause of Constitution. Reproduced as published in A History of American Portraits. Dover Publications, copyright 1967.

Source: Max Farrand (ed.), *The Records of the Federal Convention of 1787, Volume III*. New Haven: Yale University Press, 1966. Pages 290-291.

THE HOUSE DEBATE

A. Objectives

Students will...

1. Apply information from previous lessons in discerning reasons for changes in attitudes regarding the inclusion of a bill of rights.

2. Evaluate the arguments presented in Congressional debate.

3. Analyze the issues in debates over the Bill of Rights.

B. Lesson Activities (One Day)

1. Use the Readers' Theatre (**DOCUMENT U**) to dramatize the debate in the first Congress on the efficacy of amending the Constitution to include a Bill of Rights. With the exception of the inclusion of narrators, the text is excerpted from the Congressional debate. You may wish to further edit in order to adapt the Readers Theatre for your class.

2. The Readers' Theatre script provided with this lesson incorporates 10 speaking parts. Select students to read the parts of:

   Narrator 1
   Narrator 2
   James Madison of Virginia
   James Jackson of Georgia
   Benjamin Goodhue of Massachusetts
   Roger Sherman of Connecticut
   Alexander White of Virginia
   John Vining of Delaware

Elbridge Gerry of Massachusetts
Thomas Sumter of South Carolina

3. As the ten students are presenting the Readers' Theatre, have the remainder of the class complete **STUDENT WORKSHEET II**.

4. Conclude the lesson with one of the following written assignments:

   a. As an observer in the House gallery during the debate over the amendments to the Constitution, record your observations in a letter to a foreign colleague.

   b. Assuming the role of James Madison, write journal entries describing your feeling regarding deliberations over your amendments to the Constitution and attitudes towards your colleagues in the House; or

   c. As a voter in a state, write a letter to your representative in the House expressing your views on the proposed amendments to the Constitution.

C. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

plausible	encroachments
despotism	licentiousness

D. Evaluating the Lesson

Use the student worksheet and the written exercise as ways of assessing student understanding of this lesson.

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STUDENT RESOURCE: WORKSHEET II

DEBATE OVER AMENDING THE CONSTITUTION 1789

Name:	Pro or Con on a Bill of Rights	Summary of Arguments
James Madison	_____	_____
James Jackson	_____	_____
Benjamin Goodhue	_____	_____
Roger Sherman	_____	_____
Alexander White	_____	_____
John Vining	_____	_____
Elbridge Gerry	_____	_____
Thomas Sumter	_____	_____

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READER'S THEATRE
FIRST CONGRESS CONGRESSIONAL DEBATE

Narrator 1:
James Madison sits in the United States House of Representatives representing the State of Virginia. Mr. Madison had originally opposed the inclusion of a Bill of Rights at the Constitutional Convention; however, during the campaign for the House seat he promised voters that he would, if elected, propose a declaration of rights be incorporated in the recently ratified United States Constitution. James Monroe, his opponent in the race, supported the inclusion of a bill of rights.

Narrator 2:
Madison attempted to open debate on a Bill of Rights in May but the House was deep in debate on other substantive issues. The date is June 8, 1789 and the House of Representatives is still embroiled in the discussion of other pressing measures when James Madison rises to propose consideration of amendments to the Constitution. Mr. Madison begins with an apology for bringing up a new matter but argues that it is important to discuss a Bill of Rights.

Narrator 1:
Let's listen in.

Mr. Madison:
This day, Mr. Speaker, is the day assigned for taking into consideration the subject of amendments to the Constitution. As I consider myself bound in honor and in duty to do what I have done on this subject, I shall proceed to bring the amendments before you as soon as possible, and advocate them until they shall be finally adopted or rejected by a constitutional majority of this House....(p. 1017)

Mr. Jackson:

I am of opinion we ought not to be in a hurry with respect to altering the Constitution. ...Our Constitution, sir, is like a vessel just launched, and lying at the wharf; she is untried, you can hardly discover any one of her properties. It is not known how she will answer her helm, or lay her course. ...In short, Mr. Speaker, I am not for amendment at this time....Let the Constitution have a fair trial; let it be examined by experience, discover by that test what its errors are, and

then talk of amending; but to attempt it now is doing it at a risk, which is certainly imprudent (p. 1017-18)

Mr. Goodhue:
...I believe it will be proper to attend to the subject...because it is the wish of many of our constituents, that something should be added to the Constitution, to secure in a stronger manner their liberties from the inroads of power. Yet I think the present time premature; inasmuch as we have other business before us, which is incomplete, but essential to the public interest. When that is finished, I shall concur in taking up the subject of amendments. (p. 1019)

Mr. Madison:
...If we continue to postpone from time to time, and refuse to let the subject come into view, it may occasion suspicions, which, though not well founded, may tend to inflame or prejudice the public mind, against our decisions. They may think we are not sincere in our desire to incorporate such amendments in the Constitution as will secure those rights, which they consider as not sufficiently guarded...." (p. 1019-20)

Mr. Sherman:
I am willing that this matter should be brought before the House at a proper time. I suppose a number of gentlemen think it their duty to bring it forward....Other gentlemen may be disposed to let the subject rest until the more important objects of Government are attended to; and I should conclude...that the people expect the latter from us in preference to altering the Constitution; but because they have ratified that instrument, in order that the Government may begin to operate. If this was not their wish, they might as well have rejected the Constitution, as North Carolina has done, until the amendments took place. The State I have the honor to come from adopted this system by a very great majority, because they wished for the Government; but they desired no amendments. I suppose this was the case in other States; it will therefore be imprudent to neglect much more important concerns for this....(p. 1020)

Mr. White:
I hope the House will not spend much time on this subject, til the more pressing business is despatched; but, at the same time, I hope we shall not dismiss it altogether, because I think a majority of the people who have ratified the Constitution, did it under the expectation that Congress would, at some convenient time, examine its texture and point out where it was defective, in order that

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it might be judiciously amended. ...I fear, if we refuse to take up the subject, it will irritate many of our constituents, which I do not wish to do. (p. 1021)

Mr. Vining:
...I have two...reasons for opposing this motion; the first is, the uncertainty with which we must decide theory; the second is...how far is it proper to take the subject of amendments into consideration, without the consent of two-thirds of both Houses? I will submit it to gentlemen, whether the words of the Constitution, 'the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendment,' do not bear my construction, that it is a requisite for two-thirds to sanction the expediency of going into the measure at present, as it will be to determine the necessary of amending at all.... (p. 1022)

Mr. Madison:
...If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this.... I will candidly acknowledge, that...if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done. (pp. 1023-1025)

Narrator 1:
Mr. Madison proceeded to specify the need to preface the Constitution with a declaration that all power is derived from the people.

Mr. Madison:
...That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution....

Narrator 2:
It sounds like Madison is reading from the Declaration of Independence!

Narrator 1:
Mr. Madison proceeds to read from a list of proposed amendments he feels would be appropriate to secure the blessings of liberty without endangering the Consti-

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tution to which he was so committed.

Mr. Madison:
...The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the federal Constitution, to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless.... (p. 1028)

Narrator 2:
Didn't Madison argue at the Constitutional Convention that a bill of rights was not necessary?

Narrator 1:
Madison was a strong supporter of George Mason's Declaration of Rights which prefaced the Virginia Constitution of 1776. He did not, however, support Mason's call for a bill of rights at the Philadelphia Convention.

Mr. Madison:
...It has been objected...against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration....This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.... (p. 1031)

Narrator 2:
What is Madison referring to?

Narrator l:
The last clause of the fourth resolution he proposed reads "The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution." (p. 1027)

Mr. Madison:
...Having done what I conceived was my duty, in bringing before this House the

subject of amendments...I...advocate greater despatch [sic] in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government. (p. 1034)

Mr. Jackson:
The more I consider the subject of amendments, the more I am convinced it is improper. ...Are we not sent here to guard those rights which might be endangered, if the Government was an aristocracy or a despotism? View for a moment the situation of Rhode Island, and say whether the people's rights are more safe under State Legislatures than under a Government of limited powers? Their liberty is changed to licentiousness. But do gentlemen suppose bills of rights necessary to secure liberty? If they do, let them look to New York, New Jersey, Virginia, South Carolina, and Georgia. Those States have no bill of rights, and is the liberty of the citizens less safe in those States, than in the other of the United States? I believe it is not.

Narrator 2:
I thought Virginia had a state bill of rights.

Narrator 1:
Virginia's 1776 Declaration of Rights was the first true Bill of Rights. It became, according to John Adams, the mother of all other state bills of rights. Mr. Jackson is correct is saying that New York, New Jersey, Georgia, and South Carolina had no bill of rights. He could also have added Rhode Island to that list of states without a state declaration of rights.

Narrator 2:
But, according to Mr. Jackson, Rhode Island has forsaken liberty for licentiousness!

Mr. Jackson:
There are, Mr. Speaker, a number of important bills on the table which require dispatch; but I am afraid, if we enter on this business, we shall not be able to attend to them for a long time. ...I hope, therefore, the gentleman will press us no further; he had done his duty, and acquitted himself of the obligation under which he lay. He may now accede to what I take to be the sense of the House, and let the

business of amendments lie over until next spring; that will be soon enough to take it up to any good purpose. (p. 1036)

Mr. Gerry:
I do not rise to go into the merits or demerits of the subject of amendment....But I consider it improper to take up this business, when our attention is occupied by other important objects. ...The gentleman from Virginia says it is necessary to go into a consideration of this subject, in order to satisfy the people. For my part, I cannot be of this opinion. The people know we are employed in the organization of the Government, and cannot expect that we should forego this business for any other.... (pp. 1036-37)

Mr. Sherman:
"I do not suppose the Constitution to be perfect, nor do I imagine if Congress and all the Legislatures on the continent were to revise it, that their united labors would make it perfect. I do not expect any perfection on this side of the grave in the works of man; but my opinion is, that we are not at present in circumstances to make it better. It is a wonder that there has been such unanimity in adopting it, considering the ordeal it had to undergo; and the unanimity which prevailed at its formation is equally astonishing; amidst all the members from the twelve States present at the federal convention. There were only three who did not sign the instrument to attest their opinion of its goodness." (p. 1039)

Mr. Sumter:
I consider the subject of amendments of such great importance to the Union, that I shall be glad to see it undertaken in any manner. ...Although I am seriously inclined to give this subject a full discussion, yet I do not wish it to be fully entered into at present, but am willing it should be postponed to a future day, when we shall have more leisure.... (p. 1040)

Narrator 1:
The House voted to refer the discussion of amendments to a committee. On July 21, six weeks after introducing his proposed amendments, Madison again urged the House to discuss the amendments.

Narrator 2:
Instead, the House sent the amendments to a select committee consisting of one member from each state. Madison was a member of this select committee.

Narrator 1:
Yes, but so was Roger Sherman an ardent opponent of the amendments.

Narrator 2:
The Select Committee made some minor changes in the amendments Madison had proposed and reported back to the House within a week. The House agreed to discuss the amendments as a Committee of the Whole.

Narrator 1:
At times it seemed like every word was challenged; Madison was growing more impatient.

Mr. Gerry:
Gentlemen seem in a great hurry to get this business through. I think, Mr. Chairman, it requires a further discussion; for my part, I had rather do less business and do it well, than precipitate measures before they are fully understood. The honorable gentleman from Virginia stated, that if the proposed amendments are defeated, it will be by the delay attending the discussion of doubtful propositions; and he declares this to partake of that quality. It is natural, sir, for us to be fond of our own work. We do not like to see it disfigured by other hands... (p. 1098)

Mr. Vining:
If, Mr. Chairman, there appears on one side too great an urgency to dispatch this business, there appears on the other an unnecessary delay and procrastination equally improper and unpardonable.... (p. 1099)

Mr. Gerry:
...Gentlemen now feel the weather warm, and the subject is warm; no wonder it produces some degree of heat. Perhaps, as our next will be a winter session, we may go through more coolly and dispassionately. (p. 1106)

Narrator 1:
The debate continued with representatives lingering over every word. On August 21 Madison wrote a letter to Randolph...

Mr. Madison:
My Dear Friend,
For a week past the subject of amendts. [sic] has exclusively occupied the H. of

Reps. [sic] Its progress has been exceedingly wearisome not only on account of the diversity of opinions that was to be apprehended, but of the apparent views of some to defeat by delaying a plan short of their wishes, but likely satisfy a great part of their companions in opposition throughout the Union.... (p. 1138-39)

Narrator 2:
Finally on August 24 the House approved seventeen amendments and sent them to the Senate for approval.

Narrator 1:
The Senate sits behind closed doors and we are unable to obtain a complete record of their discussion. The Senate, during debate on the House amendments, made some changes. The most substantive of which was the elimination of Article Fourteen, one which Madison felt was "the most valuable in the whole lot."

Narrator 2:
What was Amendment Fourteen?

Narrator 1:
The amendment read, "No State shall infringe the right of trial by jury in criminal cases, nor the rights of conscience, nor the freedom of speech, or of the press." Madison wrote this amendment to insure that states would not limit these basic rights.

Narrator 2:
The Senate approved twelve amendments on September 9. Ultimately the two versions of the amendments were submitted to a Committee of Conference. The House approved the compromise wording and on September 25 the Senate adopted a resolution...

Narrator 1:
"Resolved—That the Senate do concur in the amendments proposed by the House of Representatives to the amendments of the Senate."

Narrator 2:
On September 26 the House of Representatives requested President Washington to transmit copies of the twelve approved amendments to the states for ratification.

VOICES FROM THE PAST

A. Objectives

Students will be able to:

1. Apply the arguments in support and opposition to the guarantees of federal or state bill of rights in specific cases.

2. Understand that the guarantees of bills of rights are not absolute.

3. Explain the apparent inconsistencies in application of aspects of federal or state bill of rights.

4. Explain the importance of vigilance in the maintenance of rights.

B. Lesson Activities (One Day)

1. Select students to present one or more of the "case studies" included as Student Handouts with this lesson. The student(s) should make a short presentation to the class giving background information incorporated in the handout and argue as if he/she is an attorney in a court of law.

2. The class, acting as a jury, will render a verdict in the case(s). The teacher information, provided below, indicates the outcome of the cases. Two of the three case studies deal with the Massachusetts Declaration of Rights; the other pertains to the First Amendment of the United States Bill of Rights.

LESSON FIVE: CULMINATING ACTIVITY

Student Handout: The Quock Walker cases, Massachusetts, 1781-1783. The case involves an issue over slavery in conflict with the state Declaration of Rights.

Teacher information: In *Commonwealth* v. *Jennison*, Judge William Cushing charged the jury to find against Jennison. Cushing expressed his belief that slavery was effectively abolished by Article I of the Massachusetts Declaration of Rights. The case was decided on the basis of the state bill of rights several years before the ratification of a federal declaration.

Student Handout: The Matthew Lyon Case, Vermont, 1799. The case involves an issue dealing with the First Amendment's guarantee of freedom of speech and of the press.

Teacher information: Judge Paterson specifically instructed the jury to determine Lyon's guilt or innocence, not to ponder over the constitutionality of the Sedition Act. Eleven members of the Jury were ready to give an immediate verdict; however one held out for an hour before returning a guilty verdict. Judge Paterson sentenced Lyon to four months imprisonment, a $1,000 fine, and payment of court costs. While in jail, Matthew Lyon was reelected to the House.

The constitutionality of the Sedition Act was never tested in court. In the 1964 *New York Times* v. *Sullivan* decision, 165 years after Lyon's imprisonment, the Supreme Court commented that there was a "broad consensus" that the Sedition Act was "inconsistent with the First Amendment."

Student Handout: *Commonwealth* v. *Kneeland*, Massachusetts Supreme Court, 1835. The case involves a state case over the constitutionality of a state law regarding free expression of religious beliefs.

Teacher Information: Chief Justice Shaw who presided in the case had been a member of the 1820 convention which revised the state constitution and indicated that he certainly knew the intent of the religious liberty clause. He declared that the law against blasphemy was constitutional. Justice Shaw dismissed arguments regarding punctuation and capitalization and declared that Kneeland's intent was to alienate persons who had a reverence of God, therefore the article constituted blasphemy. Justice Morton wrote a dissenting opinion in which he expressed his belief that Kneeland did not intend to blaspheme. He agreed that the article was offensive but stated that "a man may not be punished for willfully doing what he has a legal right to do." Justice Morton declared that the zeal in prosecuting the case was misguided. "To allow and encourage discourses and arguments in proof of the existence of the Deity and in support of the Christian religion, and to prohibit arguments on the other side, would appear to imply a want of confidence in the truth, power, and efficacy of these great doctrines...."

Source: Massachusetts Reports, 20 Pickering, 206 ff. as cited in Henry Steele Commager, "The Blasphemy of Abner Kneeland," The New England Quarterly, March 1935, page 39.

3. Divide the class into cooperative learning groups. Allow time for the groups to formulate questions relative to guarantees expressed in either the state or federal bills of rights as they apply in the case scenario. Each group should pose their questions relating to the presentation.

4. Conclude the lesson with a class verdict. Have students explain how they arrived at the verdict. You may wish to add other case scenarios from a different period in history (e.g. *Debs; Gideon; Miranda; Korematsu*).

5. Conclude the study of the unit with the following scenario:

   a. States have ratified a new Constitution Convention which will meet inWashington, D.C. on December 15, of this year. You have been designated as a delegate and will sit on a select committee to discuss the appropriateness of including a Bill of Rights in this new Constitution for the twenty-first century.

   b. Write a speech to be presented to the convention in which you explain your position either to support or to reject the inclusion of a Bill of Rights. The address is to make specific reference to historical issues and, if in support of a declaration of rights, may include specific guarantees you wish to include. Use a controversial issues format in preparing this speech in which you anticipate and discount arguments which may be used in attacking your position.

C. **Extension Option**

You may wish to assign students research topics and have the class develop their own scenarios through the course of study. This option is highly recommended for American Government as it affords the option of looking at individuals who were involved in court cases based on aspects of the Bill of Rights. Reference the annotated bibliography for resource materials which contain more

contemporary cases for student research in developing this option.

D. Vocabulary Development

Students should keep a vocabulary journal which defines these and other words which may not currently be in their vocabulary.

anathema canonical chimera

E. Evaluation

1. Use the questions posed by cooperative learning groups as one means of assessing student knowledge and application of the concepts in the Bill of Rights. The final written assignment can be used to determine how well students understood arguments presented in both Federalist and Antifederalist debates over a Bill of Rights as well as evaluate a student's analysis of historical issues which were presented in class lessons or learned from outside research.

2. Encourage students to participate in oratorical and essay contests based on the Bill of Rights. Have student include speeches or essays in portfolios for end of course assessment.

QUOCK WALKER
(Primary Source)

In 1754 James Caldwell of Worcester, Massachusetts purchased three slaves, Mingo, Dinah and their nine-month old son Quock. With Caldwell's death in 1763 his property was divided and Quock went to his widow, Isabell. Isabell remarried and on her death her second husband, Nathaniel Jennison assumed he owned Quock. Quock, 19 years old at the time, claimed that both James and Isabell Caldwell promised him his freedom; Caldwell assured him he would be free by age 25 and that Isabell promised him freedom at age 21. Jennison refused to free Quock. In 1781, Quock fled and went to work at a nearby farm for John and Seth Caldwell, James Caldwell's brothers. Jennison was furious and seized Quock, dragged him back to his farm and severely beat him.

Jennison filed suit charging the Caldwells with inciting Quock to run away and for L. 1,000 damages; while Quock Walker went to court suing Jennison for assault and battery. The *Jennison* v. *Caldwell* case was heard first. At the trial Jennison produced the 1754 bill of sale which showed that Quock, child of Mingo and Dinah, was a slave. The court ruled in Jennison's favor; however, during the second trial, *Walker* v. *Jennison*, Quock's lawyers argued that he was a free man since slavery ran contrary to natural law. In this case the jury decided in favor of Walker. Both cases were appealed.

The Superior Court met on Circuit at Worcester and heard the appeal in *Walker* v. *Jennison*. Walker's attorney avoided using the promise of freedom in the case and concentrated on the argument that slavery violated the laws of God and the 1780 Massachusetts Declaration of Rights which stated,

> ***"All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their Lives and Liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."***

Constitution of the Commonwealth of Massachusetts, Article I of A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, as cited in Robert M. Spector, "The Quock Walker Cases (1781-83), Journal of Negro History," Vol. 53, p. 14.

STUDENT RESOURCE: DOCUMENT V

The court not only upheld Walker but reversed the earlier *Jennison* v. *Caldwell* decision. Jennison appealed to the Massachusetts General Court and argued that the free and equal clause of the Declaration of Rights had deprived him, and other slave owners in the state, of their right to property. The case, now *Commonwealth* v. *Jennison*, was heard before the Supreme Judicial Court with Chief Justice William Cushing presiding.

Source: Robert M. Spector, "The Quock Walker Cases 1781-83," Journal of Negro History, Vol. 53, pp. 12-32.

STUDENT RESOURCE: DOCUMENT W

MATTHEW LYON CASE

Representative Matthew Lyon of Vermont began his term in Congress with an attack on Adams' administration Stamp Act which was enacted as a means of raising revenues for military preparations. His pro-French sentiments further irritated Federalists who were riding a tide of popular support as a repercussion to the XYZ Affair. Lyon was not popular in the House; soon after taking his seat he spat in the face of Connecticut Congressman Roger Griswold, a Federalist, who had been accusing him of cowardice during the Revolution. Griswold, seeking revenge, struck Lyon with a hickory walking stick; in turn, Lyon grabbed a pair of tongs and the two men brawled on the House floor until finally separated by their colleagues.

Lyon, as a member of the House, opposed passage of the Alien and Sedition Acts (1798) which had been promoted as a preparation for a possible war with France. Section 2 of the Sedition Act stated:

> ***...if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false, scandalous, and malicious writing or writings against the government of the United States, or either House of the Congress of the United States, or the President of the United States with intent to defame the said government...or to bring them...into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President...done in pursuance of any such law...or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign national against the United States, their people or their government, then such person being thereof convicted before any court of the United States...shall be punished by a fine not exceeding $2,000 and by imprisonment not exceeding two years.***

Federalists, in defense of the Act, argued that although the Constitution guaranteed freedom of the press in the First Amendment it did not license libel against

an individual or the government. Republicans, on the other hand, argued that each state had laws which protected the character of the individual from seditious libel and a federal law was unnecessary.

Lyon responded to the passage of the Sedition Act by establishing a Republican magazine entitled The Scourge of Aristocracy in which he printed articles critical of governmental actions and attacks on the integrity of President Adams. During his campaign for reelection, Lyon was charged with violation of the Sedition Act and was the first to stand trial under the law.

Lyon was indicted on three counts under the Sedition Act. The first was a letter to the editor of a Federalist newspaper replying to an attack the newspaper had made upon him. In the letter, Lyon expressed criticism of President Adams. The second and third counts involved a letter by the American poet Joel Barlow to his brother-in-law who served in the House as a representative from Georgia. Lyon read the letter in speeches throughout Vermont and the letter was printed and circulated as part of Lyon's reelection campaign. He was charged with publication of the Barlow letter and "deceitfully, wickedly and maliciously contriving...with intent and design to defame the...government of the United States."

Lyon requested two Republican lawyers to argue his case but was turned down because of their previous commitments. He therefore asked fellow Republican Israel Smith to serve as his attorney. Smith who was running against Lyon for Congress agreed to assist in the case but refused to serve as his attorney. Lyon, therefore, represented himself. During jury selection the judge denied that Lyon had the right to any preemptive challenges. Once the jury was selected, Lyon challenged the court's jurisdiction on the grounds that the Sedition Act violated Amendment One of the United States Constitution. The judge overruled the plea.

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STUDENT RESOURCE: DOCUMENT X

COMMONWEALTH V. KNEELAND

Abner Kneeland, a preacher and freethinker, was indicted for blasphemy in December, 1833 and was tried in municipal court in Boston in January, 1834. This was the first of four successive trials which covered a span of four years. Kneeland considered himself a scholar on the New Testament and served as Baptist and later a Congregationalist minister. Disenchanted with both religious denominations, Kneeland assumed the pulpit as a member of the Universalist Church and had preached throughout New England and the northeast. Religious doubts convinced him to secede from the church and embrace pantheism. Facing opposition in New York, Kneeland decided to settle in Boston where, in 1830, he organized The Society of Free Enquirers and established a religious newspaper, The Boston Investigator, to promote his beliefs. The Boston clergy, irritated by Kneeland's non-conformist religious teachings, were especially outraged over the December 20, 1833 issue of The Investigator which contained three articles they considered profane. Two articles were reprints from a New York non-conformist newspaper, The Free Inquirer. The first dealt with the Virgin Birth which was considered so offensive that judges in all four cases considered it too embarrassing to have it read to the juries. The second article ridiculed prayer and compared God to General Jackson, which was anathema in Boston. Kneeland admitted to authoring the third article in question which explained his opposition to Universalist beliefs. Kneeland began the article with the statement, "Universalists believe in a god which I do not; but believe that their god, with all his moral attributes, is nothing more than a chimera of their own imagination." He further charged that the story of Jesus Christ was "fable and fiction;" that miracles could be explained by natural principles or were mere tricks played upon gullible congregations; and that denial of eternal life did not exist.

The Boston clergy demanded that Kneeland be charged with violation of the 1782 Act Against Blasphemy which stated:

> ***If any person shall willfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or reproaching Jesus Christ or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, that is, the canonical scriptures as contained in the books of the Old and New Testaments, or by exposing them or any part of***

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them to contempt or ridicule, he shall be punished.

Kneeland's attorney challenged the constitutionality of the blasphemy law. He also argued that his client was not responsible for the publication of the two articles from the New York newspaper and that the court should review the laws of grammar and punctuation regarding the third article. He maintained that a close review of the statement "Universalists believe in a god which I do not" indicates that Kneeland had used a small "g" rather than a capital letter and did not place a comma between the word "god" and "which." His intent therefore, was to indicate that he did not believe in the god the Universalists worshiped.

Judge Thacher dismissed the issue of the constitutionality of the statute by declaring that the framers of the Massachusetts Constitution "had not degenerated from the character" of their Puritan ancestors. With regard to the issue of punctuation, Thacher informed the jury that he would correct Kneeland's error and insert a comma between "which" and "god." The jury brought in a guilty verdict, but the case was appealed to the state Supreme Court. The first two hearings by the state court produced were dismissed. Kneeland discharged his attorney and argued his own case in the third trial of November, 1835.

During the third hearing, Kneeland and the state Attorney General agreed to a compromise in which the state dropped the indictment dealing with the two New York newspaper articles in return for an admission on the authorship of the third article in the original indictment. The case focused on the constitutionality of the anti-blasphemy law.

APPENDIX I

HOUSE OF REPRESENTATIVES' AMENDMENTS AUGUST 24, 1789

Article the First.

After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than one Representative for every fifty thousand persons.

Article the Second.

No law varying the compensation to the members of Congress, shall take effect, until an election of Representatives shall have intervened.

Article the Third.

Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

Article the Fourth.

The Freedom of Speech, and of the Press, and the right of the People peaceably to assembly, and consult for their common good and to apply to the Government for a redress of grievances, shall not be infringed.

Article the Fifth.

A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person.

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Article the Sixth.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article the Seventh.

The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Eighth.

No person shall be subject, except in case of impeachment, to more than one trial, or one punishment for the same offence [sic], nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article the Ninth.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence [sic].

Article the Tenth.

The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia when in actual service in time of War or public danger) shall be by an Impartial Jury of the Vicinage, with the requisite of unanimity for conviction, the right of challenge, and other accostomed [sic] requisites; and no person shall be held to answer for a capital, or otherways [sic] infamous crime, unless on a presentment or indictment by a Grand Jury; but if a

crime be committed in a place in the possession of an enemy, or in which an insurrection may prevail, the indictment and trial may by law be authorised [sic] in some other place within the same State.

Article the Eleventh.

No appeal to the Supreme Court of the United States shall be allowed, where the value in controversy shall not amount to one thousand dollars, nor shall any fact, triable by a Jury according to the course of the common law, be otherwise re-examinable, than according to the rules of common law.

Article the Twelfth.

In suits at common law, the right of trial by Jury shall be preserved.

Article the Thirteenth.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the Fourteenth.

No State shall infringe the right of trial by Jury in criminal cases, nor the rights of conscience, nor the freedom of speech, or of the press.

Article the Fifteenth.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the Sixteenth.

The powers delegated by the Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or Judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judicial the powers vested in the Legislative or Executive.

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Article the Seventeenth.

The powers not delegated by the Constitution, nor prohibited by it, to the States, are reserved to the States respectively.

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APPENDIX II

SENATE AMENDMENTS
SEPTEMBER 9, 1789

Article the First.

After the first enumeration, required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, to which number one Representative shall be added for every subsequent increase of forty thousand, until the Representatives shall amount to two hundred, to which number one Representative shall be added for every subsequent increase of sixty thousand persons.

Article the Second.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the Third.

Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition to the government for a redress of grievances.

Article the Fourth.

A well regulated militia, being necessary to the security of a free State, the right of the People to keep and bear arms, shall not be infringed.

Article the Fifth.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.
Article the Sixth.

The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no war-

rants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Seventh.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence [sic] to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article the Eighth.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour [sic], and to have the assistance of counsel for his defence [sic].

Article the Ninth.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article the Tenth.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the Eleventh.

The enumeration in the Constitution of certain rights shall not be construed to

deny or disparage others retained by the people.

Article the Twelfth.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

On September 25, 1789 Congress agreed to send twelve proposed amendments to the states for ratification. The amendments that were submitted were the same as those proposed by the Senate except for the following changes in three of the articles.

Article the first. After the first enumeration, required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which, the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, no less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives for every fifty thousand persons.

Article the third. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assembly and to petition the Government for a redress of grievances.

Article the eighth. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State, and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

Kurland, Philip and Ralph Lerner (editors). *The Founders' Constitution: Volume One, Major Themes*. Chicago: University of Chicago Press, 1987. Pages 491-494.

APPENDIX III

THE UNITED STATES BILL OF RIGHTS
RATIFIED, DECEMBER 15, 1791

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just

compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [sic].

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ANNOTATED BIBLIOGRAPHY

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2. Austin, Aleine. Matthew Lyon: "New Man" of the Democratic Revolution, 1749-1822. University Park: Pennyslvania State University Press, 1981. Austin's monograph traces the life of "patriot" Matthew Lyon from the Revolution through his career in Kentucky as a slave-owning planter. Chapter 9 gives a good account of the Lyon trial under the Sedition Act.

3. Center for Civic Education. With Liberty and Justice for All: The Story of the Bill of Rights. Calabasas, CA: Center for Civic Education, 1991. With Liberty and Justice for All is a complete unit for high school students on the Bill of Rights. The lessons focus on the historical development and current application of the guarantees of the Bill of Rights.

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and the Judicial Process. New Haven: Yale University Press, 1975. The Cover monograph is an excellent study. One chapter of the work is devoted to the "free and equal" clauses and examines specific judicial cases in Massachusetts, Virginia, and New Jersey.

6. Glasser, Ira. Visions of Liberty: The Bill of Rights for All Americans. New York: Little, Brown and Company, 1991 This study involves hundreds of cases, most contemporary, relating to the application of the Bill of Rights. Each section of the text is preceded by a visual essay by world-renowned photographer Bob Adelman.

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8. Schwartz, Bernard (editor). The Bill of Rights: A Documentary History. New York: Chelsea House, 1971. This two-volume work is a complete history of the Bill of Rights from the English antecedents to the ratification by the States. Schwartz includes Federalist and Antifederalist tracts as well as the House debates over the seventeen Madison proposals. This is an excellent compendium on the Bill of Rights.

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their application to Article I of the state Declaration of Rights.

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